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Race and genetics in court

Scientific research seems to show that some racial groups possess the low-activity MAO-A 'warrior gene'. Is it admissible in court?

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The use of genetics in the courtroom is explosive, but another facet of behavioural genetics is also creeping to the fore. It concerns race, and the apparent finding that the MAO-A gene — crucial to the Bayout case — exerts different effects in different races.

Since the most influential research on the subject, by Professor Terrie Moffitt, looked only at white New Zealanders, two psychiatric researchers at the New Jersey Medical School investigated whether the association between the violence-linked MAO-A gene and environment applied to non-whites. It didn't. When it came to non-whites, the link between tormented childhoods and later violent behaviour held true across the whole genetic spectrum; with no subset of abused children being immune. A separate study has shown that the low-activity MAO-A variant is overrepresented among Maoris.

Discoveries such as these are grist to the mill for those who believe in the disturbing idea of "racial realism". This is the politically uncomfortable idea that races are genetically different, and is at odds with the modern genetic interpretation of race as a social construct (racial realism has also been described as legitimised scientific racism). However, race is coming into the scientific picture again: BiDil is a heart medicine that is licensed specifically for use in black patients (it appears to be much less effective in whites). If race affects biology, as the licensing of BiDil implies, the claim that race affects behaviour is bound to resurface.

The cross-racial differences in the MAO-A literature don't surprise Professor Moffitt: "There is good reason to think that findings may not apply equally to all races, because some races are many generations older than other races, and this means that their DNA sequence has been 'shuffled' more over history, and the individual units move farther apart with each shuffling. If a genetic marker's effects on biology depend on the close proximity of some other marker, then the biological effect may be quite different for different groups," she says.

"Rather than suggesting that people of different ethnicity should get different sentences for the same crime, which would be unthinkable in our legal culture, I think this suggests that the genetic research is not far along enough to be applied in court safely."

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